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11 Pro Se Plaintiffs,

Civil Case No.: 1:15-CV- 1190 AJN-SN
Rule 56 Motion for Summary Judgment,
Private right of action under Section 16 b

12 v.
13 Perceptive Advisors, Joseph Edelman
14 Repros et al

15 Defendants

16 **Motion for Summary Judgment Rule 56 FRCP**

17 Below is FRCP Rule 56

18 **Rule 56. Summary Judgment**

19 (a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move
20 for summary judgment, identifying each claim or defense — or the part of
21 each claim or defense — on which summary judgment is sought. The court
22 shall grant summary judgment if the movant shows that there is no genuine
23 dispute as to any material fact and the movant is entitled to judgment as a
24 matter of law. The court should state on the record the reasons for granting or
25 denying the motion.

1 Plaintiffs have alleged and have proven all of the required elements of this
2 Section 16 b suit pursuant to SEC Rule 16 b-6(d) below.

3
4 **16 b-6(d)**

5 *Upon cancellation or expiration of an option within six months of the writing of*
6 *the option, any profit derived from writing the option shall be recoverable*
7 *under section 16(b) of the Act. The profit shall not exceed the premium*
8 *received for writing the option.*

9 The 5 necessary elements needed to show a violation of Rule 16 b-6(d) in the
10 Repros Pharmaceutical case are below:

- 11 1. The writing by Perceptive Advisors of 23,000 calls on 2,300,000
12 underlying shares of Repros.
- 13 2. The cancellation or expiration of the written calls within less than 6
14 months of the writing of the calls.
- 15 3. A profit from the writing of the calls and the cancellation or expiration
16 of those calls, which is approximately \$1.7 million
- 17 4. The fact that the writer of the calls was an insider (i.e. a beneficial
18 owner of more than 10% of the stock of Repros) at the time of the writing of
19 the calls and
- 20 5. The fact that the writer of the calls was an insider (i.e. a beneficial
21 owner of more than 10% of the stock of Repros) at the time of the
22 cancellation or expiration of the written calls.

23 Defendants concede the above elements 1- 4. But they dispute element 5
24 above.

25 Their dispute of element 5 consists of several claims.
26
27
28

1 e) They claim in their Form 4 filings that Perceptive Advisors exercised puts
2 on 2,050,000 shares of Repros on March 15, 2013, the Friday immediately before
3 the expiration date of Saturday March 16, 2013. This was stated in their SEC Form
4 4 in 15 different entries, which have not been corrected as of the day of this
5 writing. They made this claim and have refused to correct the filing, knowing that
6 the alleged exercise of the puts on 2,050,000 shares on Friday March 15, 2013
7 was prohibited by the Options Clearing Corporation Rules 801 and 805. This
8 prohibition was confirmed in letters from the attorneys for the OCC, and several
9 other documents produced as exhibits to this court.

10 f) They also claim in their form 4 filings that on March 15, 2013 they sold
11 2,050,000 shares of Repros that they owned on the Friday immediately before the
12 expiration date of Saturday March 16, 2013. They claim that the sales of their
13 stock on Friday March 15, 2013 were a result of the exercise of the puts on Friday
14 March 15, 2013. This was stated in their SEC Form 4 in 15 different entries, which
15 have not been corrected as of the day of this writing. They know that the exercise
16 of the puts on 2,050,000 shares on March 15, 2013 was prohibited by the Options
17 Clearing Corporation Rules 801 and 805. But they still claim that the exercise of
18 the puts on Friday March 15, 2013, (which is impossible) reduced their beneficial
19 ownership to below 10% on Friday March 15, 2013.

20 g) As a result of Plaintiffs making Perceptive Advisors aware that it was
21 prohibited to exercise their puts on March 15, 2013, a Friday, they now claim that
22 giving instructions to allow the exercise of the puts on Saturday March 16, 2013
23 constitutes selling their long stock on Friday March 15, 2013. And they refuse to
24 correct their SEC Form 4s filing.

25 h) They also claim that the calls, (i.e. the calls that they wrote which were
26 cancelled on Friday March 15, 2013 at 5:30 P.M. EST), were not cancelled and did
27 not expire until Saturday, March 16, 2013. They make this claim in the face of the
28 fact, that the owners of the calls, that they wrote, could not exercise the calls on
Friday and did not give instructions to exercise on Saturday. It was prohibited by
OCC Rule 801 and 805 for the owners of the calls to exercise on Friday, March 15,
2013 and thus the owners of the calls did not exercise on Friday or before. They
also did not on Friday March.

1 15, 2013 give instructions to the OCC to exercise their calls on Saturday,
2 which would have been required for them to exercise on Saturday at 11:59
3 P.M EST. So after 5:30 P.M. EST Friday, the calls that the owners had were
4 cancelled and had expired. At 5:30 P.M. Friday EST, the calls were worthless
and did not exist as they were cancelled and expired.

5 e) In Perceptive's 12 b-6 Motion to Dismiss, they claim that even if the
6 exercise of the puts on the 2,050,000 shares was considered to be at 11:59
7 P.M. Saturday, March 16, 2013, their beneficial ownership was reduced at
8 11:59 P.M. EST Saturday. This claim is false. The exercise of puts by an owner
9 of the puts merely creates a sale without designation as to what shares are
10 sold. It also does not designate what person (s) are assigned the exercise of
11 the puts. The sale, which is essentially a "short sale" gives discretion to the
12 exercising put holder to borrow shares for delivery to the assigned buyer of
the stock, thereby completing the creation of the short sale.

13 The exercise of the puts also allows the person exercising the puts the
14 discretion to buy stock after the exercise of the puts for timely delivery to the
15 assigned buyer. It also allows the exercising put holder the discretion to timely
16 deliver shares already owned to the assigned buyer after the exercise. The
17 exercising put holder can even "fail to deliver" the shares "sold short". So
18 until March 20, 2013, the exercising put holder has discretion as to what
19 shares and when the shares are delivered. The person who had written the
puts and must buy the shares is not even informed of the assignments until
Monday morning.

20 So the exercising put holders (i.e. Perceptive Advisors) had control and
21 discretion until March 20, 2013 as to what shares are to be delivered on March
22 20, 2013. According to SEC Section 13 d (a) definition of beneficial ownership
23 (below), that means the beneficial ownership in this case is not reduced until
24 the earliest on March 18, 2013 and as late as March 20, 2013.

25
26 ***§ 240.13d-3 Determination of beneficial owner.***

1 **(a)** For the purposes of sections 13(d) and 13(g) of the Act a beneficial owner
2 of a security includes any person who, directly or indirectly, through any
3 contract, arrangement, understanding, relationship, or otherwise has or
4 shares:

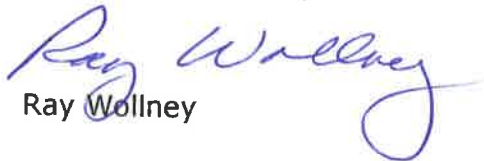
5 **(1)** Voting power which includes the power to vote, or to direct the voting of,
6 such security; and/or,

7 **(2)** Investment power which includes the power to dispose, or to direct the
8 disposition of, such security.

9 Therefore it is impossible for Perceptive Advisors to have reduced their
10 beneficial ownership to below 10% prior to the cancellation or expiration of
11 the out-of-the-money calls.

12 Thus element 5) has been proven and Summary Judgment should be granted
13 to the Plaintiff on behalf of Repros Pharmaceutical.

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